Ordinance No:
Zoning Text Amendment No: 09-08
Concerning: Commercial/Residential (CR) Zones - Establishment
Draft No. & Date: 3 - 9/15/09
Introduced: September 22, 2009
Public Hearing:
Adopted:
Effective:

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN MONTGOMERY COUNTY, MARYLAND

By: District Council at Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- Establish Commercial/Residential (CR) zones; and
- Establish the intent, allowed land uses, development methods, general requirements, development standards, density incentives, and approval procedures for development under the Commercial/Residential zones.

By adding the following Division to the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-15 "COMMERCIAL/RESIDENTIAL ZONES"
Sections 59-C-15.1 through 59-C-15.9

EXPLANATION: ***Boldface*** *indicates a heading or a defined term.*
Underlining indicates text that is added to existing laws by the original text amendment.
[*Single boldface brackets****]*** *indicate text that is deleted from existing law by the original text amendment.*
Double underlining indicates text that is added to the text amendment by amendment.
[[*Double boldface brackets****]]*** *indicate text that is deleted from the text amendment by amendment.*
** * * indicates existing law unaffected by the text amendment.*

OPINION

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. Division 59-C-15 is added as follows:

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DIVISION 59-C-15. COMMERCIAL/RESIDENTIAL (CR) ZONES

59-C-15.1. Zones Established.

59-C-15.11. The Commercial/Residential (CR) zones are established as combinations of a sequence of four factors: maximum total floor area ratio (FAR), maximum non-residential FAR, maximum residential FAR, and maximum building height. These zones are identified by a sequence of symbols: CR, C, R, and H, each followed by a number where:

a) the number following the symbol "CR-" is the maximum total FAR;

b) the number following the symbol "C" is the maximum non-residential FAR;

c) the number following the symbol "R" is the maximum residential FAR; and

d) the number following the symbol "H" is the maximum building height in feet.

The examples in this Division do not add, delete, or modify any provision of this Division. Examples are provided only to demonstrate particular applications of the provisions in the Division. Examples are not intended to limit the provisions.

59-C-15.12. Each unique sequence of CR, C, R, and H is established as a zone under the following limits:

a) the maximum total FAR must be established as an increment of 0.25 from 0.5 up to 8.0;

b) the maximum non-residential and residential FAR must be established as an increment of 0.25 from 0.25 up to 7.5;

c) the maximum height must be established as an increment of 5 feet up to 100 feet and an increment of 10 feet from 100 feet up to 300 feet; and

d) permitted density may be averaged over 2 or more directly abutting or confronting lots in the same CR zone, provided that:

1) the lots are subject to the same sketch plan;

2) the lots are created by the same preliminary subdivision plan;

3) the maximum total density and nonresidential and residential density limits apply to the entire development subject to the sketch plan and subdivision plan, not to individual lots;

4) no building may exceed the maximum height set by the zone;

5) public benefits must be provided in proportion to any phased development on individual lots; and

6) the resulting development must conform to the design and land use objectives of the applicable master or sector plan and design guidelines.

59-C-15.13. The CR zones can only be applied by sectional map amendment in conformance with the zoning recommendations of an approved and adopted master or sector plan.

Examples:

- An area zoned CR-2.0, C1.0, R1.0, H80 allows a total FAR of 2.0, with maximum non-residential and residential FARs of 1.0, thereby requiring an equal mix of uses to obtain the total FAR allowed. The height for any building in this zone is limited to 80 feet.
- An area zoned CR-6.0, C3.0, R5.0, H200 allows a residential FAR up to of 5.0, whereas non-residential density is only allowed an FAR of up to 3.0, and a mix of the two uses could yield a total FAR of 6.0. This combination allows for flexibility in the market and shifts in the surrounding context. The height for any building in this zone is limited to 200 feet.

- An area zoned CR-4.0, C4.0, R4.0, H160 allows the ultimate flexibility in the mix of uses, even buildings with no mix, because the maximum allowed non-residential and residential FARs are both equivalent to the total maximum FAR allowed. The height for any building in this zone is limited to 160 feet.

59-C-15.2. Description and Objectives of the CR Zones.

The CR zones permit a mix of residential and non-residential uses at varying densities and heights. The zones promote economically, environmentally, and socially sustainable development patterns where people can live, work, and have access to services and amenities while minimizing the need for automobile use. CR zones are appropriate where ecological impacts can be moderated by co-locating housing, jobs, and services. The objectives of the CR zones are to:

a) implement the policy recommendations of applicable master and sector plans;

b) target opportunities for redevelopment of single-use areas and surface parking lots with a mix of uses;

c) reduce dependence on the automobile by encouraging development that integrates a combination of housing types, mobility options, commercial services, and public facilities and amenities;

d) encourage an appropriate balance of employment and housing opportunities and compatible relationships with adjoining neighborhoods;

e) establish the maximum density and building height for each zone, while retaining appropriate development flexibility within those limits; and

f) standardize optional method development by establishing minimum requirements for the provision of the public benefits that will support and accommodate density above the standard method limit.

59-C-15.3. Definitions Specific to the CR Zones.

The following words and phrases, as used in this Division, have the meaning indicated. The definitions in Division 59-A-2 otherwise apply.

Car share space: a parking space that serves as the location of an in-service vehicle used by a vehicle-sharing service.

Cultural institutions: public or private institutions or businesses including: art, music, and photographic studios; auditoriums or convention halls; libraries and museums; recreational or entertainment establishments, commercial; theater, indoor; theater, legitimate.

Day care facilities and centers: facilities and centers that provide daytime care for children and/or adults, including: child daycare facility (family day care, group day care, child day care center); daycare facility for not more than 4 senior adults and persons with disabilities; and day care facility for senior adults and persons with disabilities.

Frontage: a property line shared with an existing or master-planned public or private road, street, highway, or alley right-of-way or easement boundary.

LEED: the series of Leadership in Energy and Environmental Design (LEED) rating systems developed by the Green Building Council as amended.

Locally-owned small business: a commercial business that:

a) is majority-owned by a resident of Montgomery County or any adjacent jurisdiction; and

b) meets the size standards as determined by the Small Business Administration's Table of Small Business Size Standards (SBA Table) or is a franchised company with total holdings by the local-owner that meets the size standards of the Table.

Live/Work unit: Buildings or spaces within buildings that are used jointly for commercial and residential purposes where the residential use of the space is secondary or accessory to the primary use as a place of work.

Manufacturing and production, artisan: The manufacture and production of commercial goods by a skilled manual worker or craftsperson, such as jewelry, metalwork, cabinetry, stained glass, textiles, ceramics, or hand-made food products.

Priority retail street frontage: Frontage along a right-of-way identified in a master or sector plan to be developed with street-oriented retail to encourage pedestrian activity.

Public Arts Trust Steering Committee: A committee of the Arts and Humanities Council that allocates funds from the Public Arts Trust.

Public owned or operated uses: Activities that are located on land owned by or leased and developed or operated by a local, county, state, or federal body or agency.

Recreational facilities, participatory, indoor: Facilities used for indoor sports or recreation. Spectators would be incidental on a nonrecurring basis. Such uses typically include bowling alleys, billiard parlors, indoor tennis and handball courts, and health clubs.

Recreational facilities, participatory, outdoor: Facilities used for outdoor sports or recreation. Spectators would be incidental on a nonrecurring basis. Such uses typically include driving ranges, miniature golf courses, swimming pools, and outdoor ice skating rinks.

Seasonal Outdoor Sales: A lot or parcel where a use or product is offered annually for a limited period of time during the same calendar period each year.

The availability or demand for the use or product is related to the calendar period, such as Christmas trees, pumpkin patches, or corn mazes.

Transit proximity: Level 1 proximity is based on the location of a project with access to an existing or planned Metrorail Station. Level 2 proximity is based on the location of a project with access to an existing or planned MARC Station, light rail station, or a stop along a transportation corridor with fixed route bus service where service intervals are no longer than 15 minutes during peak commute hours. A project adjacent or confronting a transit station or stop shares a property line, easement line, or is only separated by a right-of-way from a transit station or stop. In addition to a project that is adjacent or confronting, a project is also considered to have access to a transit facility if all parcels and lots within the project's gross tract area have no more than 25 percent of their area farther than the applicable distance from the transit station or stop and if not more than 10 percent of the residential units in the project are farther than the applicable distance from the station or stop. A planned transit station or stop must be funded for construction within the first 4 years of the Consolidated Transportation Program or the Capital Improvement Program. If a project qualifies for more than one transit proximity level, the project may only take incentive density for one of the qualifying benefits.

59-C-15.4. Methods of Development and Approval Procedures.

Two methods of development are available under the CR zones.

59-C-15.41. Standard Method.

Standard method development must comply with the general requirements and development standards of the CR zones. A site plan approval under Division 59-D-3 is required for a standard method development project only if:

a) the gross floor area exceeds 10,000 square feet;

b) any building or group of buildings contains 10 or more dwelling units; or

c) the proposed development generates 30 or more new peak-hour trips.

59-C-15.42. Optional Method.

Optional method development must comply with the general requirements and development standards of the CR zones and must provide public benefits under Section 59-C-15.8 to obtain the full densities and height allowed by the zone. A sketch plan and site plan are required for any development using the optional method. A sketch plan must be filed under the provisions below; a site plan must be filed under Division 59-D-3. Any required preliminary subdivision plan must be submitted concurrently with the site plan.

a) Contents of a sketch plan:

1) justification statement for optional method development addressing the requirements and standards of this Division, how the development will further the objectives of the applicable master or sector plan, and how the development will be more efficient and effective than the standard method of development;

2) total FAR, conceptual uses and maximum densities per use;

3) building massing, height, public use and other open spaces, and the relationship of proposed buildings to adjacent buildings;

4) general vehicular, pedestrian, and cyclist circulation and access;

5) table of proposed public benefits and incentive density requested for each benefit; and

6) general phasing of structures, uses, public benefits, and site plans.

b) Procedure for a sketch plan:

1) Before filing a sketch plan application, an applicant must comply with the provisions of Section 4 of the Manual for Development Review Procedures for Montgomery County, as amended, that concern the following procedures:

(a) notice;

(b) holding a public meeting; and

(c) posting the site of the submission.

2) The submittal, review procedure, and fees for a sketch plan are the same as a pre-application submission under Section 50-33A(a), except that there is no requirement to submit a preliminary subdivision plan within 90 days.

3) The Planning Board may require some elements of the sketch plan to be binding on any subsequent site plans.

59-C-15.5. Land Uses.

No use is allowed in the CR zones except as indicated below:

- *Permitted Uses* are designated by the letter "P" and are permitted subject to all applicable regulations.
- *Special Exception Uses* are designated by the letters "SE" and may be authorized as special exceptions under Article 59-G.

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a) Agricultural	
Farm and country markets	P
Farm, limited to crops, vegetables, herbs, and ornamental plants	P
Nursery, horticultural – retail or wholesale	P
Seasonal outdoor sales	P
b) Residential	
Dwellings	P
Group homes, small or large	P
Hospice care facilities	P
Housing and related facilities for senior adults or persons with disabilities	P
Life care facilities	P
Live/Work units	P
Personal living quarters	P
c) Commercial Sales and Service	
Advanced technology and biotechnology	P
Ambulance or rescue squads	P
Animal boarding places	SE
Automobile filling stations	SE
Automobile rental services, excluding storage of vehicles and supplies	P
Automobile repair and services	P
Automobile sales, indoors and outdoors	P
Clinic	P
Conference centers	P
Eating and drinking establishments	P
Health clubs and gyms	P
Home occupations, major	SE
Home occupations, registered and no-impact	P
Hotels and motels	P
Laboratories	P
Dry cleaning and laundry pick-up stations	P
Offices, general	P
Recreational facilities, participatory, indoor	P
Recreational facilities, participatory, outdoor	SE
Research, development, and related activities	P
Retail trades, businesses, and services of a general commercial nature	P
Self-storage facilities	SE
Veterinary hospitals and offices without boarding facilities	P
Warehousing, not including self-storage, less than 10,000 square feet	P
d) Institutional & Civic	
Charitable and philanthropic institutions	P
Cultural institutions	P

Day care facilities and centers	P
Educational institutions, private	P
Hospitals	P
Parks and playgrounds, private	P
Private clubs and service organizations	P
Publicly owned or publicly operated uses	P
Religious institutions	P
e) Industrial	
Manufacturing and production, artisan	P
Manufacturing, compounding, processing, or packaging of cosmetics, drugs, perfumes, pharmaceuticals, toiletries, and projects resulting from biotechnical and biogenetic research and development	P
Manufacturing and assembly of medical, scientific, or technical instruments, devices, and equipment	P
f) Other	
Accessory buildings and uses	P
Bus terminals, no-public	P
Parking garages, automobile	P
Public utility buildings, structures, and underground facilities	P
Radio and television broadcast studios	P
Rooftop mounted antennas and related unmanned equipment buildings, cabinets, or rooms	P

59-C-15.6. General Requirements.

Development in the CR zone must comply with the following requirements.

59-C-15.61. Master Plan and Design Guidelines Conformance.

Development that requires a site plan must be consistent with the applicable master or sector plan and any design guidelines adopted by the Planning Board.

59-C-15.62. Priority Retail Street Frontages.

Development that requires a site plan and is located on a street identified as a priority retail street frontage must provide the following:

a) on-street parallel parking, unless specifically denied by the agency maintaining the right-of-way;

b) majority of display windows and entrances arranged between zero and 45 degrees to the sidewalk;

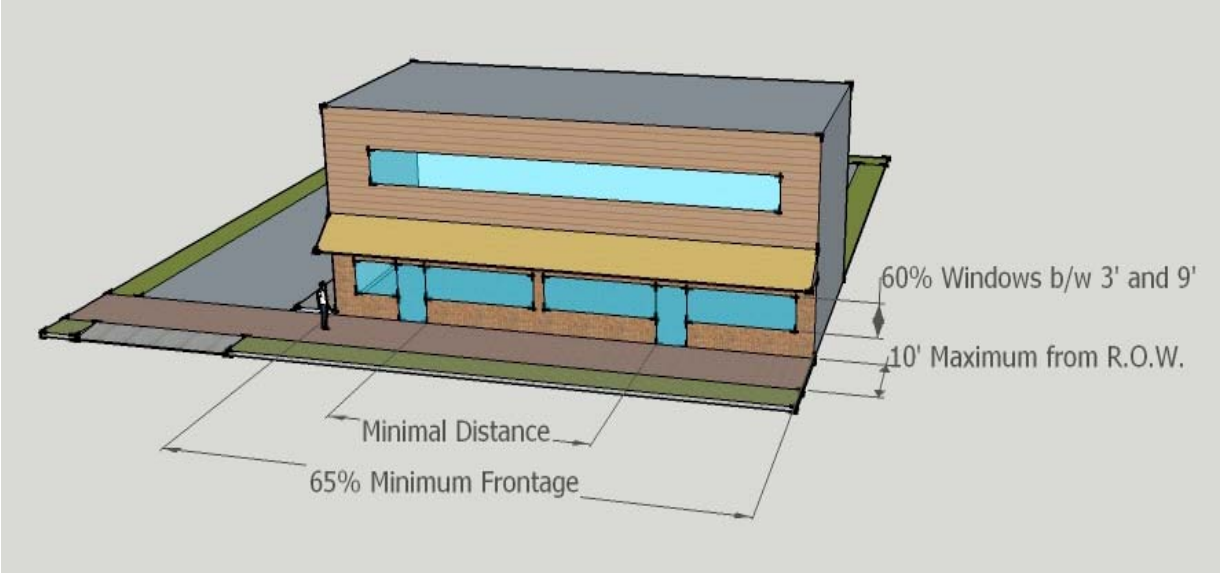
c) shop entrances spaced at minimal distances in order to activate the street;

d) building façade along at least 65 percent of the aggregate length of the front street right-of-way;

e) front building wall no farther than 10 feet from the public right-of-way or 5 feet if no public utility/improvement easement (PUE or PIE) is required; and

f) windows or glass doors on 60 percent of the building façade between 3 and 9 feet above sidewalk grade.

These provisions may be modified or waived by the Planning Board during the review of a site plan if found to be unreasonably burdensome to a proposed development due to conditions such as unusual lot size, topography, limited frontage, or other atypical circumstance.



Priority Retail Building Requirements Illustrative

59-C-15.63. Streetscape.

Streetscape improvements must be consistent with the recommendations of the applicable master or sector plan.

59-C-15.64. Bicycle Parking Spaces and Commuter Shower/Change Facility.

a) Bicycle parking facilities must be free of charge, secure, and accessible to all residents or employees of the proposed development.

b) The number of bicycle parking spaces and shower/change facilities required is shown in the following table (calculations must be rounded to the higher whole number):

Bicycle and Shower/Change Facilities Required	
Use	Requirement
Residential	
In a building containing less than 20 dwelling units.	At least 4 bicycle parking spaces.
In a building containing 20 or more dwelling units.	At least 0.5 bicycle parking spaces per dwelling unit, not to be less than 4 spaces and up to a maximum of 100 required spaces.
In any group living arrangement expressly for senior citizens.	At least 0.1 bicycle parking spaces per unit, not to be less than 2 spaces up to a maximum of 100 required spaces.
Non-Residential	
In a building with a total non-residential floor area of 1,000 to 9,999 square feet.	At least 2 bicycle parking spaces.
In a building with a total non-residential floor area of 10,000 to 99,999 square feet.	One bicycle parking space per 10,000 square feet, up to a maximum of 100 required spaces.
In a building with a total non-residential floor area of 100,000 square feet or greater.	One bicycle parking space per 10,000 square feet, up to a maximum of 100 required spaces. One shower/change facility for each gender.

59-C-15.65. Parking.

a) The maximum number of parking spaces provided on site must not exceed the minimum number established under Article 59-E.

b) The minimum number of parking spaces required is based on transit proximity as follows:

Minimum Parking Requirements				
	Transit Proximity (Level 1 or 2)			
	¼ mile from transit	¼ to ½ mile from transit	½ mile to 1 mile from transit	>1 mile from transit
Non-residential: the minimum number of required spaces under Article 59-E multiplied by the following factor:	0.20	0.40	0.60	0.80
Residential: the minimum number of required spaces under Article 59-E multiplied by the following factor:	0.60	0.70	0.80	0.90

c) Parking requirements must be met by any of the following:

1) providing the spaces on site;

2) constructing publicly available on-street parking; or

3) entering into an agreement for shared parking spaces in a public or private facility within 1,000 feet of the subject lot, provided that the off-site parking facility is not in an agricultural (Division 59-C-9), planned unit development (Division 59-C-7), or residential (Division 59-C-1) zone.

d) Every "car-share" space provided reduces the total minimum number of required spaces by 6 spaces for non-residential use or 3 spaces for residential use.

Example: A non-residential site requiring at least 100 spaces under Article 59-E would be required to provide a maximum of 100 spaces on site. If that site was within ¼ to ½ mile of a transit station, the minimum requirement for parking would be 40 spaces (100 x 0.40 = 40). If 2 car-share spaces were provided, that requirement would be 28 for non-residential use or 34 for residential use.

e) The design of surface parking facilities must comply with the following:

1) a parking facility at or above grade must not be located between the street and the main front wall of the building or the side wall of a building on a corner lot; however, the Planning Board may approve a design if it finds that the alternative design would provide safer and more efficient circulation;

2) if a site is adjacent to an alley, the primary vehicular access to the parking facility must be from that alley; and

3) curb cuts must be kept to a minimum and shared by common ingress/egress easements whenever possible.

f) The design of parking facilities with drive-through services must comply with the following; however, the Planning Board may approve a design if it finds that the alternative design would provide safer and more efficient circulation:

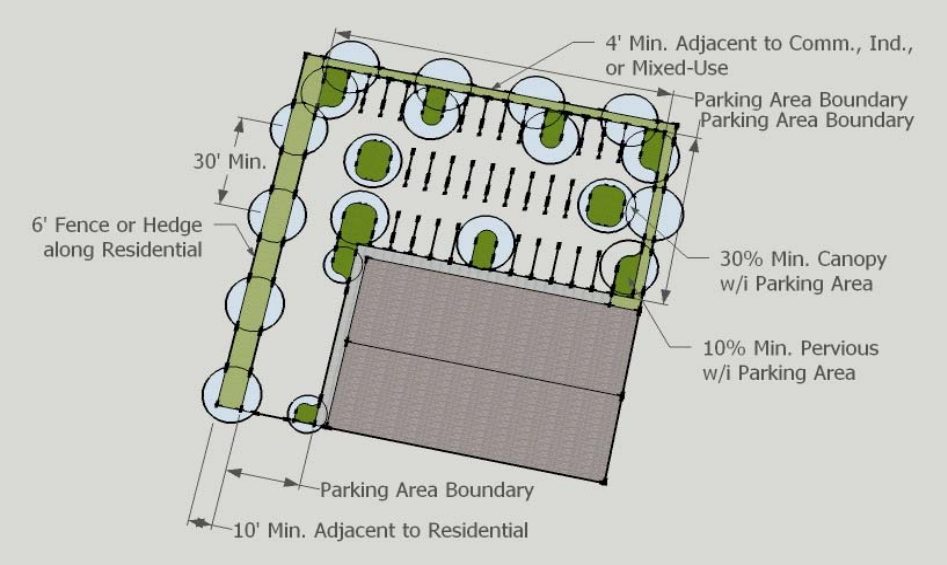
1) the driveway must not be located between the street and the main front wall of a building or the side wall of a building on a corner lot;

2) the drive-through service window must be located on the rear wall of the building; and

3) curb cuts to a street must be minimized to one drive aisle of no more than 20 feet in width for two-way traffic or two drive aisles each of no more than 10 feet in width for one-way traffic.

g) Landscaping for surface parking facilities must satisfy the following requirements:

Minimum Landscape Standards for Surface Parking	
Subject	Requirement
Right-of-Way Screening	6-foot width of continuous soil panel or stormwater management recharge facility (not including any PUE or PIE) with groundcover, planting bed, or lawn; a minimum 3-foot high continuous evergreen hedge or fence; and one deciduous tree per 30 feet of street frontage or per the applicable streetscape standards.
Adjacent to a lot or parcel in any Commercial, Industrial, or Mixed-Use Zone	4-foot width continuous soil panel or stormwater management recharge facility with groundcover, planting bed, or lawn; one deciduous tree per 30 feet of frontage.
Adjacent to a lot or parcel in an Agricultural or Residential District	10-foot width continuous soil panel or stormwater management recharge facility with groundcover, planting bed, or lawn; 6-foot high continuous evergreen hedge or fence; and one deciduous tree per 30 feet of frontage.
Internal Pervious Area	10 percent of the parking facility area comprised of individual areas of at least 100 square feet each.
Tree Canopy Coverage	30 percent of the parking facility area (at 15 years growth).



Surface Parking Landscape Requirements Illustrative

59-C-15.7. Development Standards.

Development in any CR zone must comply with the following standards.

59-C-15.71. Density.

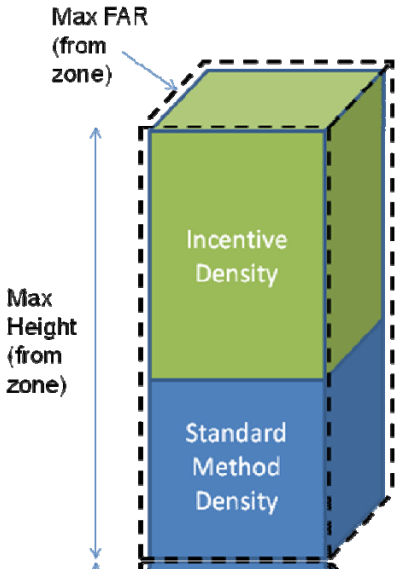
a) The maximum density for any standard method project is 0.5 FAR. Any single land use or any combination of land uses allowed in the zone may achieve the maximum density.

b) The maximum total density and mix of maximum non-residential and residential density for any project using the optional method of development is specified by the zone. The difference between the standard method density and optional method density is defined as "incentive density" and is allowed under the incentive density provisions of Section 59-C-15.8.

59-C-15.72. Height.

a) The maximum height for any building or structure in a standard method project is 40 feet.

b) The maximum height for any building or structure in an optional method project is determined by the zone.



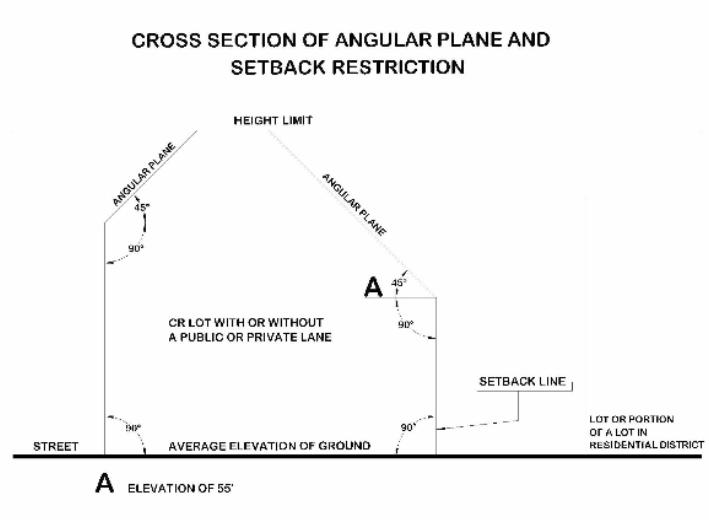
Incentive Density Illustration (with maximum FAR)

59-C-15.73. Setbacks.

A building must not be any closer to a lot line of an agricultural (Division 59-C-9) or residential (Division 59-C-1) zone than:

a) 25 feet or the setback required by the adjacent lot, whichever is greater; and

b) the building must not project beyond a 45 degree angular plane projecting over the lot measured from a height of 55 feet at the setback determined above, with the exception of those features exempt from height and setback restrictions under Section 59-B-1.



Angular Plan Setback Illustration

59-C-15.74. Public Use Space.

a) The minimum public use space for any standard method project is 10 percent of the net tract area of the site.

b) Projects using the optional method of development must provide public use space as follows:

Minimum Required Public Use Space (% of net lot area)				
Acres (Gross)	Number of Existing and Planned Right-of-Way Frontages			
	1	**2**	**3**	**4+**
< ½	0	0	4%	6%
½ - 1.00	0	4%	6%	8%
1.01 - 3.00	4%	6%	8%	10%
3.01 – 6.00	6%	8%	10%	10%
6.01 +	8%	10%	10%	10%

c) Public use space must:

1) be calculated on the net lot area of the site;

2) be rounded to the next highest 100 square feet;

3) be easily and readily accessible to the public;

4) be placed under a public access easement in perpetuity; and

5) contain amenities such as seating options, shade, landscaping, or other similar public benefits.

d) Instead of providing on-site public use space, for any site of 3 acres or less, a development may propose the following alternatives, subject to Planning Board approval:

1) public use space improvements to an area equal in size within ¼ mile of the subject site; or

2) a payment in part or in full to the Public Amenity Fund, equal to the average cost of required site improvements, added to the current square foot market value of the area required as public use space.

59-C-15.75. Residential Amenity Space.

a) Any building containing 20 or more dwelling units must provide amenity space for its residents as follows:

Required Residential Amenity Space

Type of Amenity Space	Area of Amenity Space
Indoor space in a multi-purpose room, fitness room, or other common community room(s), at least one of which must contain a kitchen and bathroom.	20 square feet per dwelling unit up to 5,000 square feet.
Passive or active outdoor recreational space.	20 square feet per dwelling unit, of which at least 400 square feet must adjoin or be directly accessible from the indoor amenity space.

b) The amenity space is not required for Moderately Priced Dwelling Units (MPDUs) on a site within a metro station policy area or where the Planning Board finds that there is adequate recreation and open space within a ½ mile radius of the subject site.

c) The amenity space requirement may be reduced by ½ for Workforce Housing Units (WFHUs) located within a metro station policy area or if the minimum public open space requirement is satisfied on site.

d) The provision of residential amenity space may be counted towards meeting the required recreation calculations under the M-NCPPC Recreation Guidelines, as amended.

59-C-15.8. Special Regulations for the Optional Method of Development

59-C-15.81. Incentive Density Provisions.

This section establishes incentives for optional method projects to provide public benefits in return for increases in density and height, consistent with the applicable master or sector plan, up to the maximum permitted by the zone.

a) The incentive density approved for each proposed public benefit is calculated as a percentage of the total incentive density, which is the incremental difference between the standard method maximum FAR (0.5) and the proposed project FAR up to the maximum FAR allowed by the zone.

b) The minimum and maximum incentive density percentage increases for each public benefit are established in Section 59-C-15.81(f).

c) The Planning Board may accept, reject, or modify a proposed incentive density or modify the requested percentage above the minimum of incentive density established up to the maximum established. Except for those benefits with specific maximum standards, in approving incentive densities above the minimum, the Planning Board must consider:

1) the size and configuration of the parcel;

2) the policy objectives and priorities of the applicable master or sector plan;

3) the applicable design guidelines;

4) the relationship of the site to adjacent properties;

5) the presence or lack of similar benefits nearby; and

6) quantitative and qualitative enhancements provided exceeding the delineated minimum incentive density standards.

d) Public benefits that apply to 1 building in a multi-building project must be weighted proportionally to the density of the applicable building compared to the total density of the project.

e) In addition to the public benefits set forth below, an applicant may propose other public benefits that will further the goals and objectives of the applicable master or sector plan for the purpose of obtaining an incentive density increase.

f) The Planning Board may grant no more than 30 percent of the total incentive density for a project for the connectivity, design, diversity,

or environment incentive categories under (h) below or any public benefit approved under (e) above.

Example: A development in a zone with a maximum FAR of 5.5 would base all public benefit calculations on the incentive density of 5.0 FAR (5.5-0.5). Thus, being on a site adjacent to a metro station would yield an automatic incentive density of 2.5 FAR (5.0 x 0.50), and full density would be allowed by providing public benefits equal to an additional 50 percent.

g) Provision for inspections, maintenance, and enforcement of public benefits provided in return for incentive density must be established in a Site Plan Enforcement Agreement approved by the Department of Permitting Services and by resolution of the Planning Board before the certification of a site plan.

h) Table of density incentives:**Incentive Zoning Table**

Public Benefit	**Percent of Incentive Density**		**Section Reference**
	Minimum	**Maximum**	
Transit Proximity	See section reference		15.82
Connectivity & Mobility			
Community Connectivity	10	20	15.831
Community Garden	5	10	15.832
Parking at the Minimum	10	20	15.833
Pedestrian Through-Block Connection	5	10	15.834
Public Parking	20	30	15.835
Transit Access Improvement	10	20	15.836
Diversity			
Adaptive Buildings	15	30	15.841
Affordable Housing: MPDUs	See section reference		15.842
Affordable Housing: WFHUs	See section reference		
Care Center	10	20	15.843
Community Facility	10	20	15.844
Local Retail Preservation	10	20	15.845
Unit Mix and Size	5	10	15.846

Design			
Floor Plate Size	10	20	15.851
Historic Resource Protection	10	20	15.852
Parking Below Grade	10	20	15.853
Podium/Tower Setback	5	10	15.854
Public Art	10	20	15.855
Public Plaza/Open Space	5	10	15.856
Streetscape, Off-Site	5	10	15.857
Exceptional Design	10	20	15.858
Environment			
Bio-retention and Stormwater Recharge	5	10	15.861
Conveyed Parkland	10	20	15.862
Dark Skies	5	10	15.863
Energy Efficiency and Generation	10	20	15.864
Green Wall	5	10	15.865
LEED Rating	10	30	15.866
Rainwater Reuse	5	10	15.867
Transferable Development Rights	10	30	15.868
Tree Canopy	10	20	15.869
Vegetated Area	5	10	15.8610
Vegetated Roof	10	20	15.8611

59-C-15.82. Transit Proximity Incentives.

A project on a site near transit encourages greater transit use and reduces vehicle miles traveled, congestion, and carbon emissions. The additional percent of incentive density automatically allowed is as follows:

Transit Proximity	Level 1 Transit	Level 2 Transit
Adjacent or confronting	50%	25%
Within ¼ mile	40%	20%
Between ¼ and ½ mile	30%	15%
Between ½ and 1 mile	20%	10%

59-C-15.83. Connectivity and Mobility Incentives.

A project that enhances connectivity and mobility encourages pedestrian and other non-auto travel for short and multi-purpose trips as well as for commuting. Such a project facilitates social interaction, provides opportunities for healthier living, and stimulates local businesses.

59-C-15.831. Community Connectivity.

a) The minimum incentive density increase for a building that enhances community connectivity by locating near existing retail uses or provides retail uses, requires that:

1) at least 10 different existing or proposed retail uses with direct pedestrian access are within 1/2 mile; and

2) at least 35 percent of those uses have a maximum floor area of 5,000 square feet and that any newly provided retail uses remain at or below that area for a period of at least 4 years after the initial use-and-occupancy permit is issued for that use.

b) The maximum increase requires additional benefits, such as a large diversity of retail uses, a greater number of retail shops, provision of services associated with live-work units, or that the required number of retail uses are within ¼ mile.

59-C-15.832 Community Garden.

A community garden allows any resident to grow their own produce, reduce reliance on automobiles, increase water and air quality, and interact with other residents.

a) The minimum incentive density increase requires that the garden:

1) is located on the subject site or within 500 feet of the subject site;

2) provides all garden spaces with at least 12 inches of soil depth and access to water; and

3) provides community garden space at a rate equivalent to 1 space per 20 dwelling units. Each space must be at least 16 square feet. At least 1 out of each 10 spaces must be accessible under ADA standards.

b) The maximum increase requires additional features such as a composting facility, additional garden space, seating areas, doubling as a green roof, or additional accessible garden plots.

59-C-15.833. Parking at the Minimum.

a) The minimum incentive density increase requires that sites of 1 acre or more provide on-site only the minimum required number of parking spaces.

b) The maximum increase requires that sites of less than 1 acre provide on-site only the minimum required number of parking spaces.

59-C-15.834. Pedestrian Through-Block Connections.

A through-block connection enhances pedestrian mobility and helps to create a variety of open spaces, particularly on larger blocks.

a) The minimum incentive density increase for a pedestrian through-block connection requires that:

1) the pedestrian connection must provide direct access between streets;

2) the pedestrian connection must be at least 15 feet in width;

3) at least 35 percent of the walls facing the interior pedestrian connection below a height of 8 feet must have clear,

unobstructed windows, unless the Planning Board finds that an alternative design is at least equally safe;

4) the pedestrian connection must be open to the public between sunrise and sunset and, where it leads to a transit facility or publicly-accessible parking facility within ½ mile, for the hours of operation of the transit and/or parking facility; and

5) retail uses fronting both a pedestrian connection and a street must maintain operable doors from both unless not required by the Planning Board during site plan review due to exceptional site circumstances.

b) The maximum increase requires additional benefits such as:

1) direct connection to parks;

2) transit facilities;

3) public buildings;

4) pedestrian connection with accessible retail uses along a majority of its length;

5) connections increased in width; or

6) public artworks integrated into the walk.

59-C-15.835. Public Parking.

a) The minimum increase requires providing on-site the difference between the minimum number of required parking spaces and the maximum number of allowed parking spaces as publicly accessible spaces for free or at a market rate.

b) The maximum increase requires providing public parking spaces, as required above, in combination with additional improvements, such as constructing those spaces underground or in a structure.

59-C-15.836. Transit Access Improvement.

a) The minimum incentive density increase for transit access improvements requires that the improvements:

1) are located within 1/2 mile of the proposed development site or, in the case of mobile transit improvements such as a bus shuttle, provide regular access for passengers within 1/2 mile; and

2) are built to ADA accessibility standards as amended.

b) The maximum increase requires additional benefits such as closer access, new access easements, connecting walkways, mezzanines, seating areas, structures for wind/rain protection, or concourse areas.

59-C-15.84. Diversity Incentives.

59-C-15.841. Adaptive Buildings.

An adaptive building can adjust to a diversity of uses over time, which makes the building more accommodating of mixed uses, more sustainable, and more embedded in the pattern of a community.

a) The minimum incentive density increase for an adaptive building requires that:

1) the floor to floor dimension must be at least 15 feet for all floors; and

2) the internal floor plan is based on a structural system allowing flexibility of volumes divisible from 1 open floor plate to any number of parceled volumes.

b) The maximum increase requires additional benefits such as that:

1) the structural system has additive capacity for any available density and height that is not used by the building without demolition of the structure; or

2) the internal layout is built to allow changes between residential, retail, and office uses by minor modifications.

59-C-15.842. Affordable Housing.

a) All residential development must comply with the requirements of Chapters 25A and 25B for the provision of Moderately Priced Dwelling Units (MPDUs) and Workforce Housing Units (WFHUs).

b) Provision of MPDUs above the minimum required grants an incentive density increase, providing the following standards are met:

1) the increase in density is calculated on the incentive density as required by Chapter 25A;

2) the MPDUs must be reasonably distributed throughout the project; and

3) any dwelling units built under this section must be controlled under the MDPU or WFHU provisions for a minimum period of 99 years.

Example: Provision of 14.5 percent MPDUs achieves an incentive density increase of 20 percent (25-A-5(c)(3)). In the case of a CR4.5, that would equal 0.20 x 4.0 (the incentive density), which is 0.8 FAR.

c) Provision of WFHUs grants an incentive density increase at the following rate: 2 times the percentage of units provided as WFHUs up to 30 percent.

Example: Provision of 5 percent WFHUs achieves an incentive density increase of 10 percent; provision of 12 percent WFHUs achieves an incentive density increase of 24 percent.

59-C-15.843. Care Center.

a) The minimum incentive density increase for a center for daytime adult or child care requires a facility for at least 12 users and the general public must have the opportunity to comprise at least 25 percent of the users.

b) The maximum increase requires additional benefits such as providing for additional users, a safe drop-off area, an increase in users from the general public, and recreation facilities provided above those required by law.

59-C-15.844. Community Facility.

a) The minimum incentive density increase for a community facility that helps meet the needs of residents and workers requires that the community facility:

1) is recommended in the applicable master plan or sector plan; and

2) is accepted for operation and use by an appropriate public agency, community association, or nonprofit organization.

b) The maximum increase requires further benefits, such as an entrance to the facility directly on the street, location of the building within 10 feet of a public sidewalk, associated outdoor open space, or integration into an area with a residential FAR of at least 2.0 (or at least 30 dwelling units per acre).

59-C-15.845. Local Retail Preservation.

Preservation of locally-owned small businesses on site is eligible for incentive density as follows:

a) preservation of up to 2 small businesses: 10 percent; and

b) preservation of 3 or more small businesses: 20 percent.

Exact terms of lease requirements and rental agreements must be established by the site plan enforcement agreement.

59-C-15.846. Unit Mix and Size.

a) The minimum incentive density increase for creating residential buildings with a minimum mix of dwelling unit types (calculated by rounding to the next higher whole number) requires provision of at least:

1) 7.5 percent as efficiency dwelling units;

2) 8 percent as one-bedroom dwelling units;

3) 8 percent as two-bedroom dwelling units; and

4) 5 percent as three-bedroom dwelling units.

b) The maximum increase requires provision of at least (calculated by rounding to the next higher whole number):

1) 10 percent as efficiency dwelling units;

2) 10 percent as one-bedroom units;

3) 10 percent as two-bedroom units; and

4) 7.5 percent as three-bedroom units.

59-C-15.85. Design Incentives.

59-C-15.851. Floor Plate Size.

a) The minimum incentive density increase for the provision of floor plate restrictions requires that:

1) the floor area of any floor above a height of 120 feet does not exceed 10,000 square feet for residential uses or 19,000 square feet for non-residential uses, or 12,000 square feet for mixed-uses (if not more than 60 percent of a mixed-use floor is used for any single use); and

2) the exterior of the building facing any street or public open space has at least 60 percent glass on the floors with the reduced floor plate.

b) The maximum increase requires additional benefits, such as providing the reduced floor plates in conjunction with the Exceptional Design factor, providing smaller floor plates, combining this incentive with the tower setback, providing a larger percentage of glass, or integrating sustainable technologies into the architecture.

59-C-15.852. Historic Resource Protection.

a) The minimum incentive density increase for the preservation of a historic resource designated in the Master Plan for Historic Preservation requires that a preservation strategy for the resource is approved by the Planning Board as part of the site plan enforcement agreement and that a historic area work permit is issued by the Historic Preservation Commission.

b) The maximum increase requires that other benefits are provided, such as interpretive signs/exhibits, integration and construction of context-appropriate landscapes and settings, or protection of important viewsheds.

59-C-15.853. Parking Below Grade.

a) The minimum incentive density increase requires that sites of 1 acre or more provide all on-site parking spaces below the average grade of the primary street frontage.

b) The maximum increase requires that sites of less than 1 acre provide all on-site parking spaces below the average grade of the primary street frontage.

59-C-15.854. Podium/Tower Setback.

a) The minimum incentive density increase for the provision of a tower setback requires that the tower must be set back from the first floor

building frontage at or below 72 feet and the setback must be at least 6 feet.

b) The maximum increase requires that the tower setback be at or below 50 feet and that the setback be at least 12 feet.

59-C-15.855. Public Art.

Public art is considered a public benefit because it enhances the quality of place and creates a sense of identity in a community.

a) The minimum incentive density increase for public art requires that it:

1) enhances the general or specific cultural objectives of the applicable master or sector plan; and

2) is approved by the Public Arts Trust Steering Committee.

b) The maximum increase requires that, in addition to the above requirements, the artwork fulfill at least 5 of the following goals as determined by the Public Arts Trust Steering Committee:

1) achieve aesthetic excellence;

2) ensure an appropriate interaction between the art and the architectural setting in terms of scale, materials, and context;

3) ensure public access and invite public participation;

4) encourage collaboration between the artist(s) and other project designers early in the design phases;

5) ensure long-term durability of permanent works through material selection or a documented maintenance program;

6) encourage a rich variety of arts including permanent, temporary (revolving), and event programming;

7) increase public understanding and enjoyment of art through interpretive information and/or programmed events; and

8) achieve a collection of commissioned art that is unique and contributes in a positive way to the identity of the community.

c) A fee instead of public art may be accepted for incentive density as follows:

1) the minimum fee is calculated on 1 percent of the development's projected cost;

2) the fee is paid to the Public Arts Trust Steering Committee;

3) the fee is used for installation, management, and maintenance of public art at the discretion of the Public Arts Trust Steering Committee, with preference given to the policy area where the proposed development is located; and

4) the incentive density is equal to a 5 percent increase for every 1 percent of projected development cost paid to the Public Arts Trust, up to 20 percent.

59-C-15.856. Public Plaza/Open Space.

Plazas are important public amenities and create interesting spaces and active gathering areas.

a) The minimum incentive density increase for any plaza requires that:

1) the plaza is directly accessible to a street;

2) the plaza must be open to the public at least between sunrise and sunset;

3) no proposed loading or parking facilities should be visible below a height of the fourth floor; and

4) the plaza must be in addition to any public use space required by the development standards or other minimum open space requirement of this Division.

b) The maximum increase requires that the above requirements are met, in addition to the following:

1) the plaza's width must be at least 50 feet;

2) where the plaza is provided as part of a redevelopment, buildings facing the plaza must be designed so that:

A) the walls of any non-residential floor area facing the plaza must have windows on at least 60 percent of the façade below a height of 40 feet; and

B) the main entry to any dwelling units is from a wall facing the plaza; and

3) the plaza should contain seating, trash receptacles, landscaping, and other amenities such as water features, kiosks, and passive recreation areas.

59-C-15.857. Streetscape, Off-Site.

Streetscape improvements enhance the pedestrian experience and better connect buildings to the public spaces.

a) The minimum incentive density increase for streetscape improvements requires that the following criteria are met:

1) the improvements must be located within 1/2 mile of the subject site; and

2) the improvements are equal to 18 percent of the net lot.

b) The maximum increase requires that the improvements be equal to at least 36 percent of the net lot area.

59-C-15.858. Exceptional Design.

The minimum incentive density increase for high-quality site and architectural design requires that at least 3 of the following criteria are met;

the maximum density increase requires that at least 5 of the following criteria are met:

a) provides innovative solutions in response to the architectural context and surrounding landscape, for example, by rotating floor plates for views or reconciling offset street-walls;

b) creates a sense of place that will serve as a landmark in the community, for example, by creating a distinguishing element that is visible from an important view or at a gateway to an area;

c) enhances the public realm in a distinct and original manner, for example, by using existing materials and forms in new ways to provide continuity and contrast;

d) adds to the diversity of the built realm within the community, for example, by introducing new materials, building methods, or design styles;

e) uses design solutions to make compact/infill living, working, and shopping environments pleasurable and desirable, for example, by retrofitting surface parking lots and single-use retail malls or creating multi-use, pedestrian-dominated realms in previous auto-oriented areas; and

f) integrates environmentally sustainable solutions, for example, by using stormwater management facilities that incorporate best management practices in an apparent and observable way or integrating passive solar features into the visible structure of a building or site.

59-C-15.86. Environment Incentives.

59-C-15.861. Bio-retention and Stormwater Recharge.

a) The minimum incentive density increase for the use of bio-retention and recharge facilities requires that at least 25 percent of projected stormwater outfall for a 10-year event be contained and recharged on site or within ¼ mile of the site.

b) The maximum increase requires that at least 50 percent of projected stormwater for a 10-year event be contained and recharged.

59-C-15.862. Conveyed Parkland.

a) The minimum incentive density increase for land conveyed to the M-NCPPC for inclusion in or provision of parkland, trail area, or other master-planned Parks' use requires conveyance of at least of 15 percent of the gross lot area.

b) The maximum increase requires conveyance of at least 30 percent of the gross lot area.

59-C-15.863. Dark Skies.

a) The minimum incentive density increase for dark skies-compliant projects requires that they be built and maintained in conformance with the standards established by the International Dark-Sky Association as amended.

b) The maximum increase requires that the exterior lighting plan be integrated into an energy efficiency plan for the entire project submitted and approved by the Planning Board with a site plan application.

59-C-15.864. Energy Efficiency and Generation.

a) The minimum density incentive increase for the use of on-site renewable energy generation requires that buildings must meet the minimum energy efficiency standards of 17.5 percent for new

buildings, 10.5 percent for existing buildings, or generate at least 1.5 percent of their energy on-site.

b) The maximum increase requires additional benefits such as greater energy efficiency and the generation of at least 2.5 percent of energy on-site.

59-C-15.865. Green Walls

a) The minimum incentive density increase for a green wall requires that it:

1) must be designed, installed, and maintained to cover at least 30 percent of the area of a blank wall or parking garage facing a street or plaza; and

2) must be found to add to the aesthetic quality and environmental sustainability of the project.

b) The maximum increase requires additional benefits such as a greater percent of coverage, southern or western exposure, the use of plants with varying flowering seasons, or integration into an overall energy or environmental site design program.

59-C-15.866. LEED Rating.

A LEED-rated building or equivalent rating system approved under Chapter 8 Article VII is eligible for an incentive density increase if it meets any continuing requirements necessary to maintain that status. (http://www.usgbc.org/Default.aspx) The amount of incentive density increase is equal to the following:

a) LEED Silver: 10 percent

b) LEED Gold: 20 percent

c) LEED Platinum: 30 percent

59-C-15.867. Rainwater Reuse.

a) The minimum incentive density increase for the collection of rainwater for on-site irrigation, grey-water use, or filtration for re-use requires that a minimum of 25 percent of projected rainwater for a 10-year event be collected and used on-site or within ¼ mile of the site.

b) The maximum increase requires that at least 50 percent of projected rainwater for a 10-year event be collected and used.

59-C-15.868. Transferable Development Rights.

The incentive density increase for the purchase of transferable development rights (TDRs) must meet the following:

a) the purchase must be executed and recorded before approval of a record plat;

b) the use of this incentive must be for development on land recommended as a TDR receiving area in the appropriate master or sector plan;

c) TDRs must be purchased in increments of 10; and

d) the incentive density increase is equal to 10 percent for every 10 TDRs purchased, up to 30 percent.

59-C-15. 869. Tree Canopy.

a) The minimum incentive density increase for the provision of tree canopy requires coverage of at least 25 percent of the on-site open space at 15 years growth.

b) The maximum increase requires coverage of at least 50 percent of the on-site open space at 15 years growth.

59-C-15.8610. Vegetated Area.

a) The minimum incentive density increase for a vegetated area requires that the following criteria are met:

1) the area must be in addition to any required on-site open space or any vegetated roof incentive;

2) the area must replace at least 5,000 square feet of impervious area;

3) the area provides at least 12 inches of soil depth; and

4) the area is planted with well-maintained vegetation.

b) The maximum increase requires additional benefits, such as larger area or greater soil depth.

59-C-15.8611. Vegetated Roof.

a) The minimum incentive density increase for a vegetated roof requires that the:

1) vegetated roof must cover at least 33 percent of the roof of the building, excluding any space occupied by mechanical equipment; and

2) soil or media depth must be at least 4 inches.

b) The maximum increase requires coverage of at least 60 percent of the roof area.

59-C-15.87. Special Regulations for Purchase of Building Lot Termination (BLT) Development Rights.

a) A development under the Optional Method must purchase building lot termination (BLT) easements under Chapter 2B, or a contribution must be made to the Agricultural Land Preservation Fund under Chapter 2B equal to 12.5 percent of the incentive density floor area using the following formula:

1) one BLT easement is required for each 9,000 square feet of residential floor area;

2) one BLT easement is required for every 7,500 square feet of non-residential floor area.

b) When a BLT easement cannot be purchased or the amount of floor area attributed to a building lot termination easement is a fraction of the floor area equivalent, payment must be made to the Agricultural Land Preservation Fund according to the rate set annually by executive regulation.

59-C-15.9. Existing Approvals.

a) A lawfully existing building or structure and the uses therein, which predates the applicable sectional map amendment, is a conforming structure or use, and may be continued, renovated, reconstructed to the same size and configuration, or enlarged up to 10 percent above the existing floor areas or 30,000 square feet, whichever is less, and does not require a site plan. A larger addition requires compliance with the full provisions of this Division.

b) A project that received an approved development plan under Division 59-D-1 or schematic development plan under Division 59-H-2 before the enactment of the CR zones may proceed under the binding elements of the development plan and will thereafter be treated as a lawfully existing building and may be renovated or reconstructed under Subsection (a) above. Such projects may be amended as allowed under Division 59-D-1 or 59-H-2, under the provisions of the previous zone; however, any increase in the total floor area or building height beyond that allowed by Subsection (a) above requires full compliance with the full provisions of this Division.

c) A project which has had a preliminary or site plan approved before the applicable sectional map amendment may be built or altered at any time, subject to either the full provisions of the previous zone or this division, at the option of the owner. If built under the previous approval, it will be treated as a lawfully existing building and may be renovated or reconstructed under Subsection (a) above.

Sec. 2. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council